

February 4, 2020

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
1776 F Street, NW
Washington, DC 20006

Delivered electronically to comments@fdic.gov

Re: Comments on FDIC Notice of Proposed Rulemaking, Federal Interest Rate Authority, 12 CFR Part 331, RIN-3064-AF21

Dear Chairman McWilliams,

The undersigned organizations write from the state of North Carolina to strongly oppose the FDIC's "federal interest rate authority" proposal.

North Carolina has strong interest rate caps that protect our residents from predatory payday and other high-cost loans, and a unique history of keeping these high-cost loans out of our state. North Carolina was the first state in the nation to roll back permission to engage in payday lending, and was also the first to use its police powers and power of the banking industry to litigate the rent-a-bank model of making payday loans.

A North Carolina law that briefly allowed payday lending in the state was allowed to sunset in 2001. The General Assembly sided with a coalition of hundreds of organizations and thousands of individuals in deciding not to reauthorize payday lending in the state, despite a well-funded effort by industry. The NC Commissioner of Banks then notified all payday lenders in the state that they were making illegal loans. Over half of the 1000 shops making payday loans closed their doors.

Others used a variety of schemes to continue operating. The most common scheme to avoid our state interest caps and licensing requirements was the rent-a-bank model, used by the large national chains. Under this model, payday lenders claimed they were not making the loans themselves, but instead were the "marketing, processing and servicing agent" of an out-of-state bank which, the payday lenders claimed, was the actual lender.

The NC Attorney General took enforcement action against a number of payday lenders attempting to evade North Carolina's rate cap using a rent-a-bank model. In 2004, the NC Attorney General initiated a lengthy investigation of the largest lender in the state, Advance America. After numerous hearings, the NC Commissioner of Banks, who rules in these matters, ruled against Advance America in December 2005.

The ruling stated that Advance America itself was making illegal loans in North Carolina, and that its "partnership" with an out-of-state bank did not allow it to ignore North Carolina lending

laws. Advance America was unsuccessful on appeal, and unable to make payday loans during the appeal period. Shortly after this ruling, in March 2006, the NC Attorney General announced consent agreements with the three remaining large payday chains still making loans here, First American Cash Advance (a subsidiary of CompuCredit/Valued Services Acquisitions), Check Into Cash, and Check 'n Go. These companies agreed to stop making loans in North Carolina and to stop collecting interest and fees on existing loans. These actions forced the last payday shops out of our state, almost five years after the sunset.

As of now, we are not aware of lenders evading our interest rate cap through rent-a-bank schemes. But the proposal, particularly coupled with the FDIC's failure to stop its banks from facilitating rent-a-bank usury evasions in other states, threatens to open North Carolina's doors to these scams. This would harm the people of North Carolina by subjecting them to predatory loans that would exploit many of our most financially vulnerable residents.

Since the inception of this nation, regulation of interest rate limits has been a state function. Yet the FDIC seeks to change that now, by claiming that state-regulated non-bank lenders that buy loans from banks should be able to charge rates that exceed North Carolina law. The FDIC's proposal leaves far too much room for predatory lenders to pursue rent-a-bank schemes while burdening state regulators and private citizens with the impractical task of policing who is the "true lender." This task is a challenge already, but it will become far more challenging in a landscape where the FDIC's proposal has been finalized.

The FDIC lacks the authority to regulate the interest rates charged by non-bank lenders. Moreover, the FDIC has demonstrated no need for this policy. Indeed, the residents of North Carolina are not being harmed by a lack of loans that exceed North Carolina's rate cap; rather, they are better off without high-cost loans. We urge you to withdraw this unjustified and extremely harmful proposal.

Sincerely,

Habitat for Humanity of North Carolina
Children First/Communities In Schools of Buncombe County
Center for Responsible Lending
Habitat Wake
Pisgah Legal Services
Habitat for Humanity of Orange County, NC
Habitat for Humanity Charlotte
Community Empowerment Fund
Habitat for Humanity of Greater Greensboro, Inc.
Asheville Area Habitat for Humanity

